

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 CENTRAL ISLIP

4 -----X

5 UNITED STATES OF AMERICA,

6 - against -

7 ALAN DRESNER,

8 Defendant.

9 -----X

PLEA AGREEMENT

Case No. 2:14-cr-00225-SJF-WDW

10
11 Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the
12 Environmental Crimes Section of the Environment and Natural Resources Division of the United
13 States Department of Justice (the "Government") and ALAN DRESNER ("DRESNER") agree
14 to the following:
15

16 **1. Counts of Conviction.** The defendant DRESNER will waive indictment and plead
17 guilty to the one-count Information filed in the above-captioned matter, charging a violation of
18 18 U.S.C. § 1343 (Wire Fraud). Wire Fraud carries the following statutory penalties:

- 19
- 20 a. Maximum Term of Imprisonment: 20 years.
(18 U.S.C. § 1343);
 - 21 b. Minimum Term of Imprisonment: 0 years.
(18 U.S.C. § 1343);
 - 22 c. Maximum Supervised Release Term: 3 years; if a condition of
23 release is violated, the defendant may be sentenced to up to 2 years
24 without credit for pre-release imprisonment or time previously
25 served on post-release supervision; pursuant to numbered paragraph 8
26 *infra*, the defendant agrees to be subject to seven (7) Special Conditions.
(18 U.S.C. § 3583);
 - 27 d. Maximum Fine: \$250,000 or twice the gross pecuniary gain/loss,
28 whichever is greater.
(18 U.S.C. § 3571(b)(3) and (d));

1 e. Restitution: In an amount to be determined by the Court. Parties have made
2 certain joint recommendations set forth in numbered paragraph 7 *infra*.
3 (18 U.S.C. §§ 3663, 3663A & 3664); and

4 f. Special Assessment: \$100.00 per count.
5 (18 U.S.C. § 3013).

6 **2. Elements of Wire Fraud.** Count One charges Wire Fraud, 18 U.S.C. § 1343. The
7 elements of that offense are that:

8 (a) Within the Eastern District of New York;

9 (b) The defendant did knowingly and intentionally devise a scheme
10 and artifice to defraud, or to obtain money or property;

11 (c) By means of materially false and fraudulent pretenses or
12 representations; and

13 (d) For the purpose of executing such scheme and artifice, transmit and
14 cause to be transmitted writings, signs, and signals by means of a wire
15 communication in interstate commerce.
16
17

18 **3. Factual Basis.** The defendant admits all of the charges and allegations contained in
19 the Information. The defendant affirms that he is pleading guilty because he is in fact guilty of
20 Count One. Defendant DRESNER agrees that the following facts are true, and if brought to trial,
21 that the Government could prove the following facts beyond a reasonable doubt, and that the
22 following facts do not represent the entirety of the Government's evidence, and that these
23 stipulated facts are sufficient to support a conviction of Count One of the Information:

24 (a) DRESNER is "Fish Dealer X" as that person is identified in the Information in the
25 related case of *U.S. v. Anthony Joseph*, Case No. 2:14-cr-00201-SJF (E.D.N.Y.).

26 (b) From July 28, 2009, through December 15, 2011, Defendant DRESNER was a
27 federally-licensed fish dealer by the National Oceanic and Atmospheric Administration
28 ("NOAA"). During this time period, DRESNER frequently purchased seafood - principally

1 fluke (summer flounder) - from Anthony Joseph ("Joseph"); that fluke was caught on the *F/V*
2 *Stirs One* ("*Stirs One*"). Joseph was the captain of the *Stirs One*, a commercial trawler/dragger
3 that docked and offloaded at Point Lookout, New York. By July 28, 2009, DRESNER knew that
4 Joseph was cheating the New York daily trip limits and the federal Research Set-Aside ("RSA")
5 Program by overharvesting and failing to report overages of fluke that were caught on the *Stirs*
6 *One*. DRESNER knew that in order to hide the illegal catch, Joseph had to falsify Fishing
7 Vessel Trip Reports ("FVTRs"), NOAA-approved fishing logs, which were submitted to NOAA
8 for each fishing trip. The FVTR required not only general information such as date, vessel
9 name, permit number, and Coast Guard document number, but also detailed catch data such as
10 gear used, species caught, species weight, number of hauls, port of landing, and if available,
11 identity of the fish purchaser(s) (dealers).

12
13
14 (c) Under federal regulations, the *Stirs One* could only sell its catch to a federally-
15 licensed fish dealer. When DRESNER purchased *Stirs One*'s catch, NOAA regulations required
16 DRESNER, as a fish dealer, to report each purchase to NOAA through an electronic submission
17 known as a "dealer report". Dealer reports included information such as date of landing, port of
18 landing, catch vessel, corresponding FVTR numbers, commercial grade, species, price, and
19 weight. DRESNER understood that NOAA used the dealer reports for fisheries data utilized in
20 formulating fisheries policy and as a check on information provided on FVTRs. DRESNER
21 transmitted his dealer reports to NOAA from New York via a web server in Virginia over the
22 Internet to the Regional Fisheries Office in Gloucester, Massachusetts.

23
24
25 (d) Because dealer reports referenced the selling vessel's FVTR number for each
26 purchase, if the weights, species, and prices did not match the FVTR, then there was an
27 automatic red flag to NOAA. DRESNER knew that mismatched FVTRs and dealer reports
28

1 either indicated a serious error or fraud. As such, DRESNER had to make sure that for each
2 false FVTR that Joseph mailed to NOAA, there had to be a correspondingly false dealer report.

3 (e) In order to conceal and cover up the illegal harvest of fluke and its subsequent
4 purchase, and to deprive NOAA of the ability to seize the catch and impose other penalties,
5 DRESNER knowingly schemed and planned to coordinate his false dealer reports with the false
6 FVTRs of Joseph. During or shortly after offloading at the Point Lookout waterfront, Joseph
7 would inform DRESNER as to what he was going to put on the FVTRs through packing slips,
8 notations, and oral statements. Then, knowing how to falsify the dealer report so as not to arouse
9 the suspicion of NOAA, DRESNER would prepare and file false federal dealer reports that
10 represented that the fish purchased from the *Stirs One* matched what was reported by Joseph as
11 caught on the *Stirs One*. However, the catch weights, fish species, and price paid that
12 DRESNER submitted to NOAA on these dealer reports were false. During the course of this
13 scheme, from July 28, 2009, through December 15, 2011, DRESNER transmitted at least 120
14 separate, false dealer reports.

15 (f) To further conceal the illegal fluke, DRESNER and Joseph agreed that DRESNER
16 would pay for the reported fish with a check made out to the company that owned the *Stirs One*,
17 *i.e.*, *Stirs One Inc.* Meanwhile, the two agreed that DRESNER would pay Joseph for the
18 unreported fluke directly in cash. The cash component of every transaction that DRESNER had
19 with Joseph represented fish that was above quota and/or unreported. In addition, Joseph and
20 DRESNER would occasionally use a coded notation - which read "70 pound King Whiting",
21 "KW 70", or similar - on packing slips that represented seventy pound boxes of fluke. The
22 coded reference to king whiting was not always utilized, but each time that king whiting was
23 associated with a weight at or near 70 pounds per box/carton, that notation represented

CIA

1 unreported fluke. DRESNER admits that NOAA had the legal right to seize and sell fish that
2 was unreported on federal dealer reports. In DRESNER's experience, he was aware that NOAA
3 (and New York State enforcing federal fisheries laws on behalf of NOAA) had seized and
4 auctioned or otherwise sold seafood that was over-quota or otherwise retained in connection with
5 false federal paperwork. Through Defendant's scheme and collusion with Joseph, DRESNER
6 was able to electronically submit at least 120 false dealer reports, and therefore deprive NOAA
7 of 246,376 pounds of fluke valued at \$510,000. DRESNER admits that the pecuniary gain,
8 which is equal to pecuniary loss to NOAA, was 246,376 pounds of fluke valued at \$510,000.

11 **4. U.S. Sentencing Guidelines.** The defendant understands that although imposition of
12 a sentence in accordance with the United States Sentencing Guidelines ("Guidelines") is not
13 mandatory, the Guidelines are advisory and the Court is required to consider any applicable
14 Guidelines provisions as well as other factors enumerated in 18 U.S.C. §§ 3553(a), 3572 to
15 arrive at an appropriate sentence in this case. The defendant acknowledges that although the
16 parties have agreed on terms such as the Guidelines offense level, restitution, community service
17 payment, and Special Conditions of Release, the sentencing Court is free to sentence the
18 defendant up to and including the statutory maximums set forth in numbered paragraph 1 *supra*.
19 Notwithstanding the stipulated facts in numbered paragraph 3, the Government may advise the
20 Court and the Probation Office of additional information relevant to sentencing and such
21 information may be used by the Court in determining the defendant's sentence. A sentence in
22 excess of the stipulated Guidelines offense level or other penalty amounts shall not be a basis for
23 the defendant to withdraw his guilty plea. The parties agree that the defendant is at a Criminal
24 History Category I, though recognize that this could change if contrary information becomes
25 available.
26
27
28

1 The Government and DRESNER stipulate that the Guidelines calculation is as follows:

2	Base Offense Level (USSG §2B1.1(a)(1))	7
3	Plus: Loss of \$510,000.	
4	(USSG §2B1.1(b)(1)(H))	+14
5	Less: If the defendant meets requirements of	
6	USSG §3E1.1(a), he may be entitled to a two-level	
7	reduction for acceptance of responsibility, provided that	
8	he forthrightly admits his guilt, cooperates with the Court	
9	and the Probation Office in any presentence investigation	
	ordered by the Court, and continues to manifest an acceptance	
	of responsibility through and including the time of sentencing.	-2
10	Less: If the defendant pleads guilty on or before May 2,	
11	2014, and if he otherwise meets the requirements of USSG	
12	§3E1.1(a), the Government will move for a one-level reduction.	
	(USSG §3E1.1(b))	<u>-1</u>
13	Adjusted Offense Level:	18

14 This offense level (18) is within Zone D and carries a range of imprisonment of 27 to 33
15 months. The defendant stipulates that no other adjustments, departures, enhancements, or
16 variances apply to the stipulated offense level, nor will the defendant argue for any such
17 adjustments, departures, enhancements, or variances. Despite the “no other ...departures
18 ...apply” language in the previous sentence, if the Government, in its sole and exclusive
19 discretion, files a letter, motion, or notice pursuant to USSG §5K1.1 (Substantial Assistance),
20 both parties are free to independently argue for a sentence outside the stipulated Guidelines range
21 based on said filing. The parties also agree that the defendant reserves the right and shall be
22 permitted, if he chooses, to argue for a sentence outside the stipulated Guidelines range by
23 arguing the non-Guidelines factors set forth in 18 U.S.C. § 3553(a). The defendant
24 acknowledges that the Government will advocate for a sentence of imprisonment within the
25 applicable Zone D range: assuming the full application of USSG §3E1.1, 27 to 33 months. The
26
27
28

CH

1 defendant recognizes that the Government has the right to argue for such a sentence even if the
2 Government makes a USSG §5K1.1 filing.

3 The defendant further recognizes that the stipulated offense level is not binding on the
4 Probation Office or the Court. If the Guidelines offense level determined by the Probation
5 Office or the Court is for any reason, including error in calculation, different from the stipulated
6 offense level, DRESNER will not be entitled to withdraw his guilty plea and the Government
7 will not be deemed to have breached the Plea Agreement. The Government commits that, apart
8 from its judgment as to the application of USSG §3E1.1 (whether it applies, and whether it is a
9 2- or 3-level reduction), it will not advocate for a prison sentence above the stipulated Guidelines
10 range.
11

12
13 **5. Fine.** The parties have not reached an agreement with regard to a specific dollar
14 amount for a criminal fine. The parties agree that for the purposes of this Plea Agreement only,
15 the applicable fine range (assuming full application of USSG §3E1.1) is \$6,000 to \$60,000
16 pursuant to USSG §5E1.2(c)(3). The Government and DRESNER each agree not to advocate for
17 a criminal fine outside of the applicable range set forth in USSG §5E1.2(c)(3). In any event, the
18 defendant agrees to pay whatever fine is imposed by the Court as long as the fine does not
19 exceed the statutory maximum.
20

21
22 **6. Community Service Payment.** In addition to whatever fine or restitution is ordered
23 by the Court, on the date of sentencing, DRESNER shall make a one-time community service
24 payment of \$15,000 in the form of a check made out to the “Cornell Cooperative Extension of
25 Suffolk County (Marine Program)”. The payment shall be made directly to the recipient through
26 hand delivery or certified courier service. The payee address is Cornell Cooperative Extension of
27 Suffolk County (Marine Program), ATTN: Development Office, 423 Griffing Avenue, Suite
28

1 100, Riverhead, New York 11901-3071. The payee shall provide a receipt for the payment, and
2 DRESNER shall ensure that the receipt is promptly provided to the Court and the Probation
3 Office. This payment shall be used exclusively for the Marine Meadows Program on Long
4 Island, New York, and if that program has expired by the time of sentencing, for the exclusive
5 purpose of enhancing the seagrass, nearshore, estuarine, and/or salt marsh habitat of the waters in
6 and around Long Island, New York. DRESNER shall not be permitted to take any tax offset or
7 deduction for the community service payment.
8

9 **7. Restitution.** Pursuant to 16 U.S.C. § 1860(a) and 18 U.S.C. §§ 3663, 3663A & 3664,
10 the parties recommend that the Court order a total restitution figure of \$510,000, which is based
11 on the value of the fluke that NOAA was unable to seize and sell due to Defendant’s fraudulent
12 scheme. For purposes of this Plea Agreement only, NOAA waives restitution in this case. In
13 accordance with 18 U.S.C. § 3663A(a)(1)(3), the parties agree that the restitution be directed to
14 an entity other than the victim NOAA. That entity is the State of New York, embodied by the
15 Marine Resources Account of the New York State Conservation Fund. Restitution payments
16 shall be directed to the “Marine Resources Account”, c/o Robert Schwank, Management &
17 Budget Services, NYS Department of Environmental Conservation, 625 Broadway, Albany,
18 New York 12233-5012. The defendant is aware that an order of restitution is made absent an
19 analysis of his ability to pay. The defendant also acknowledges that the Court could impose a
20 multitude of requirements (such as, a lump-sum payment, sale of current or future assets,
21 garnishment of wages, seizing of financial assets and accounts, as well as formulating a payment
22 schedule) to ensure compliance with the defendant’s restitution obligation. The defendant, at the
23 date of sentencing, shall have at least \$10,000 available for restitution and is expected to make
24 this initial payment at sentencing. Both parties recognize that there may be other individuals and
25
26
27
28

274

1 entities that have some shared liability for restitution owing from the charged fraud scheme. The
2 Government agrees that if the entire restitution balance is satisfied from another source that it
3 shall consider in good faith and consent to appropriate filings that seek to terminate the
4 defendant's ongoing restitution obligation. Lastly, with regard to any restitution ordered to be
5 paid by Anthony Joseph in the case of *U.S. v. Anthony Joseph*, Case No. 2:14-cr-00201-SJF
6 (E.D.N.Y), \$510,000 of Anthony Joseph's restitution obligation shall be joint and several with
7 the \$510,000 restitution obligation of Alan Dresner recommended by this Plea Agreement.
8

9 **8. Special Conditions of Release.** Defendant agrees to be sentenced to a term of
10 supervised release of three (3) years. DRESNER agrees to be bound by the following seven
11 Special Conditions of Supervised Release, in addition to whatever conditions of release are
12 imposed by the Court:
13

14 **Special Condition No. 1.** The defendant is immediately banned from holding and shall
15 relinquish his federal dealer license and his New York State Marine and Coastal District
16 Food Fish and Crustacea Dealers and Shippers License, nor shall he be permitted to
17 remain or become an officer, shareholder, or partner in any entity that holds a federal
18 dealer license.

19 **Special Condition No. 2.** The defendant is immediately banned from buying fish from
20 Anthony Joseph, *F/V Stirs One*, or any vessel owned or operated by Stirs One Inc.
21

22 **Special Condition No. 3.** The defendant is immediately banned from being employed in
23 a position where he has a legal or employment duty to complete federal or New York
24 State dealer reports. The defendant is immediately banned from accessing or making
25 entries on the SAFIS computer system.

26 **Special Condition No. 4.** The defendant is immediately banned from conducting any
27 business at 99 Bayside Drive, Point Lookout, New York.
28

1 **Special Condition No. 5.** After release from incarceration, the defendant shall not operate a
2 vehicle that transports seafood commercially unless that vehicle has a NOAA-approved,
3 operational tracking unit installed prior to and while engaging in the delivery, pickup,
4 marketing, or transport of seafood.

5 **Special Condition No. 6.** The defendant consents to NOAA retroactively adjusting,
6 correcting, or otherwise reconciling dealer reports submitted by him or on his behalf in order
7 to account for previously unreported fish. This consent includes creating new records,
8 including aggregates, with null or placeholder figures (date, vessel, FVTR number, etc.) in
9 order to facilitate correction and/or reconciliation of the purchase data.

10 **Special Condition No. 7.** The defendant shall continue to make restitution payments as
11 ordered by the Court until such time as it is established that the restitution amount has
12 been paid in full to the Government's designee.

13 **9. Special Assessment.** The defendant shall pay a special assessment of \$100.00, which is
14 due in full at sentencing.

15 **10. Appellate and Other Waivers.** DRESNER agrees to give up his right to appeal his
16 conviction, the judgment, and orders of the Court. DRESNER also agrees to waive any right he
17 might have to appeal any aspect of the sentence, including any orders relating to restitution. The
18 defendant agrees not to file any collateral attack on the conviction or sentence, including a petition
19 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any time in the
20 future after the defendant is sentenced. Nevertheless, the defendant may bring a post-conviction
21 claim if the defendant establishes that ineffective assistance of counsel directly affected the validity
22 of this waiver of appeal and collateral challenge rights or the validity of the guilty plea itself. Subject
23 to the foregoing, the defendant reserves the right to bring a direct appeal of any sentence imposed (a)
24 in excess of the statutory maximum, or (b) with a term of incarceration greater than the greater of (i)
25 33 months, or (ii) the maximum number of months (high end of range) specified by the final
26 Guidelines' Adjusted Offense Level, as that Level is determined by the sentencing Court. Clause (b)
27 in the foregoing sentence is a limited exception to the defendant's waiver of appeal and shall not
28 constitute an independent basis to establish that a particular sentence is unjust, illegal, or otherwise
 contrary to law. Furthermore, if the defendant is sentenced to a term of incarceration, the pursuit of
 an appeal under the limited exceptions to the waivers herein shall not be used a basis to stay or

1 otherwise delay the initiation of the term of incarceration. The foregoing waivers are binding without
2 regard to the sentencing analysis used by the Court. The defendant understands that the Government
3 might not preserve any physical evidence obtained in this case and in no way shall the defendant rely
4 on the Government preserving physical evidence for any purpose. DRESNER hereby waives any
5 claim to any physical evidence, papers, or electronic media in the possession, custody, or control of
6 the Government. The defendant waives any further disclosure or discovery from the Government.
7 DRESNER further waives any and all rights under the Freedom of Information Act relating to the
8 investigation and prosecution of the above-captioned matter and further agrees not to file a request
9 for case-related documents from any agency or department of the Executive Branch. Further, the
10 defendant waives any right to seek attorney's fees or litigation expenses under 18 U.S.C. § 3006A
11 (the "Hyde Amendment"), and the defendant acknowledges that the Government's position in the
12 instant prosecution was not vexatious, frivolous, or in bad faith. Finally, the defendant waives any
13 challenge to venue.

14 **11. Government's Obligations.** The Government agrees not to file any additional criminal
15 charges against the defendant arising from or related to any and all conduct, such conduct known to
16 the Government as of the date the last person signed this Plea Agreement, which concerned the (i)
17 catch, purchase, or sale of seafood or (ii) accuracy of forms submitted to NOAA or the state of New
18 York by or on behalf of DRESNER, Anthony Joseph, or *Stirs One* that occurred from January 1,
19 2009, through May 1, 2013. Further, the Government agrees that the reasonable and appropriate
20 sentence in this case is set forth above, and the Government agrees not to advocate for a different
21 sentence unless the defendant violates the terms of the Plea Agreement.

22 **12. Parties Bound by the Plea Agreement.** This Plea Agreement is only binding upon the
23 defendant and the Environmental Crimes Section of the Environment and Natural Resources
24 Division of the U.S. Department of Justice, also known as the Government. This Plea Agreement
25 does not bind any other federal, state, or local prosecuting authority other than the Government. The
26 Plea Agreement does not preclude the initiation of any civil, tax, or administrative action against the
27 defendant by any authority.

28 **13. Collateral Licensing Consequences.** The defendant acknowledges that pleading guilty
to these charges may have consequences with regard to his ability to maintain and/or

629

1 obtain governmental licenses and certifications, e.g., vessel operator licenses, fishing permits,
2 and seafood sales permits. The defendant further acknowledges that although he has agreed to
3 relinquish certain licenses and permits pursuant to stipulated Special Conditions of Supervised
4 Release, state and federal agencies could legally and independently suspend, revoke, or withhold
5 the issuance of permits or licenses based on the administrative and regulatory authority of those
6 agencies. Nevertheless, DRESNER affirms that he desires to plead guilty regardless of any
7 licensing and certification consequences that may result from his guilty plea.
8

9 **14. Complete Agreement.** Apart from the written proffer agreement dated June 11,
10 2013, no promises, agreements, side deals, or conditions have been entered into by the parties
11 other than those set forth in this Plea Agreement and none will be entered into unless
12 memorialized in writing and signed by all parties. Apart from the written proffer agreement
13 dated June 11, 2013, this Plea Agreement supersedes all prior promises, agreements, and
14 conditions between the parties. To become effective, this Plea Agreement must be signed by all
15 signatories listed below.
16

17 ROBERT G. DREHER
18 ACTING ASSISTANT ATTORNEY
19 GENERAL OF THE ENVIRONMENT
20 AND NATURAL RESOURCES DIVISION
21 U.S. DEPARTMENT OF JUSTICE

19 Dated: April 21, 2014

20 By: [Signature]
21 Christopher L. Hale
22 Trial Attorney, Environmental Crimes Section

23 I have read the entire Plea Agreement and have discussed it with my attorney. I
24 understand all of its terms and am entering into the Plea Agreement knowingly and voluntarily.

24 [Signature]
25 ALAN DRESNER
26 Defendant

24 4/18/14
25 Date

26 [Signature]
27 MAURICE H. SERCARZ, ESQ.
28 Attorney for the defendant

26 4/18/14
27 Date